Nos. 85-1377, 85-1378 and 85-1379

IN THE

Supreme Court of the United States

October Term, 1985

CHARLES A. BOWSHER, Comptroller General of the United States,

Appellant,

v.

MIKE SYNAR, Member of Congress, et al.,

Appellees.

UNITED STATES SENATE,

Appellant,

v.

MIKE SYNAR, Member of Congress, et al.,

Appellees.

THOMAS P. O'NEILL, Jr., Speaker of the United States House of Representatives, et al.,

Appellants,

v.

MIKE SYNAR, Member of Congress, et al.,

Appellees.

On Appeal from the United States District Court for the District of Columbia

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BRIEF *AMICUS CURIAE* OF THE AMERICAN JEWISH CONGRESS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

INTEREST OF THE AMICUS iv

SUMMARY OF ARGUMENT 1

ARGUMENT 2

I. THE BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985 VIOLATES THE FUNDAMENTAL STRUCTURE OF THE CONSTITUTION . . 2

A. The Textual Structure . . . 3

B. The Framers' Intent . . . 7

C. This Court's Decisions . . 10

CONCLUSION 16

TABLE OF AUTHORITIES

Cases

Fong Yue Ting v. United States, 149 U.S. 698 (1893) 13

Fullilove v. Klutznik, 448 U.S. 448 (1980) 13

Hampton v. Mow Sun Wong, 426 U.S. 88 (1976) 12, 13

Industrial Union Dept. v. American Petroleum Institute, 448 U.S. 607 (1980) 10, 11

National Cable Television Ass'n v. United States, 415 U.S. 336 (1974) 11, 12

Panama Refining Co. v. Ryan, 293 U.S. 388 (1935) 10

Regents of the University of California v. Bakke, 438 U.S. 265 (1978) 13

U.S. Constitution

U.S. Const. Art. I, §7, cl. 1 4

U.S. Const. Art. I, §7, cl. 2 . . 6, 7

U.S. Const. Art. I, §8, cl. 1 3

U.S. Const. Art. I, §8, cl. 2 . . .3, 4

U.S. Const. Art. I, §8, cl. 12 5

U.S. Const. Art. I, §9, cl. 4 . . 7, 8

U.S. Const. Art. I, §9, cl. 5 . . . 8

U.S. Const. Art. I, §9, cl. 7 . . 4, 5

U.S. Const. Art. II, §3 5

U.S. Const. Art. II, §3B 7

Legislative Materials

SJR 13, 99th Cong., 1st Sess. . . . 16
(1985)

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(1985) 16

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The Federalist, J. Cooke ed.
(1961) 7, 8, 9

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INTEREST OF THE AMICUS

The American Jewish Congress is a membership organization of American Jews dedicated to the preservation of the political, economic, civil, and religious rights of American Jews. Its membership has set as one of its major priorities the achievement of social justice and greater economic equity. The Constitution has been interpreted to have but little to say on these economic issues. This Court has insisted that such issues are committed by the Constitution to political process. As we argue in this attached brief, the central defect of the Gramm-Rudman Balanced Budget and Emergency Deficit Reduction Act of 1985 is that it insulates these very issues from that process.

SUMMARY OF ARGUMENT

It is unconstitutional for the Balanced Budget and Emergency Deficit Control Act of 1985 to relieve the Congress and the President of the political responsibility to make taxing and spending decisions as from time to time domestic and foreign conditions warrant. The structure of the Constitution is violated by provisions that shift such responsibility from institutions responsive to the people and competent under the Constitution to an officer neither responsive nor competent. The structure of the Constitution is violated by provisions that disable the Congress and the President from making spending decisions particularized to current conditions and that authorize an officer to make gross, unparticularized decisions.

ARGUMENT

I. THE BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985 VIOLATES THE FUNDAMENTAL STRUCTURE OF THE CONSTITUTION

Amicus respectfully submits that the questions presented by the parties -- the constitutionality of a delegation of legislative power, and the constitutionality of a delegation to a particular federal office -- are better presented as one more general question. Is it constitutional for the Balanced Budget and Emergency Deficit Control Act of 1985 (hereafter "Gramm-Rudman") to relieve the Congress and the President of the responsibility to make taxing and spending decisions as from time to time domestic and foreign conditions warrant? Amicus submits that the structure of the Constitution -- as illumined by the text of the Constitution, the intent of the Framers and the decisions of this Court -- is violated by provisions that shift such responsibil-

ity from institutions responsive to the people and competent under the Constitution to an officer neither responsive nor competent. Amicus submits that the structure is violated by provisions that disable the Congress and the President from making spending decisions particularized to current conditions and that authorize an officer to make gross, unparticularized decisions.

A. The Textual Structure

The taxing and spending power, first among the enumerated powers of the national government, was explicitly placed in the hands of the institution most politically responsive. The Constitution provides "[t]he Congress shall have Power to lay and collect Taxes . . . to pay the Debts and provide for the Common Defense and general Welfare of the United States . . . ." U.S. Const. Art. I, § 8, cl. 1; see id., Art.

I, § 8, cl. 2 ("to borrow money on the credit of the United States"). The Constitution provides further that "[a]ll Bills for raising Revenue shall originate in the House of Representatives . . . ." id., Art. I, § 7, cl. 1, the only house that originally was directly elected by the people and the house still most politically responsive to the people.

The Constitution imposed special responsibilities upon the Congress and the President and required that they develop special competences. The Constitution provides that Congress must particularize appropriations and that the President must particularize expenditures; it provides:

> No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipt and Expenditures of all public Money shall be published from time to time.

Id., Art. I, § 9, cl. 7. The Constitution requires the Congress to make appropriations, and take other measures, as conditions warrant; it provides for a periodic report and recommendation by the President to the Congress regarding "such Measures as he shall deem necessary." Id., Art. II, § 3. The Constitution discourages long-term commitments, especially for defense, by providing that "no Appropriation of Money to [raise and support armies] shall be for a longer Term than two Years." Id., Art. I, § 8, cl. 12. The publication of appropriations and expenditures enables the people to learn what the political departments are doing and to require that the political departments be politically responsive; the limitation on commitments disables the Congress and the President from

disregarding public opinion, at least on defense matters.

The Constitution places upon the President the responsibility to examine each bill presented by the Congress provision by provision, and, if he or she does not approve, to particularize the objections to the bill. See id., Art. I, § 7, cl. 2. Thus, in the case of a spending bill, the President has a duty to examine each appropriation and to make particularized objections as to the amount of, or need for, the appropriation. The Congress, in turn, has the responsibility to enter the President's objections on its journals and to consider them. See id. If the Congress nevertheless votes to enact the bill objected to, including a spending bill objected to, the vote must be by a roll-call and the votes of each voting member of Congress entered in the journals,

see id., so that the people will know who voted for or against the appropriations and be able to express their opinions to those persons.

Once a bill is signed or passed over a President's objections, the President has the responsibility to "take care that the laws be faithfully executed . . . ." Id., Art. II, § 3 B.

B. The Framers' Intent

The Framers intended that the national government have the power to tax and spend "requisite to the full accomplishment of the objects committed to its care and the complete execution of the trusts for which it is responsible." The Federalist No. 31, p. 195. J. Cooke ed. 1961 (hereinafter "The Federalist").*[1] Other remarks in Alexander Hamilton's Federalist essays make this apparent.

The need for a national government with

*[1] There was of course a prohibition on a "capitation, or other direct, Tax," U.S. (cont'd next page)

a "full" and "complete" power to tax and spend was a primary motive for the calling of the Constitutional Convention. See The Federalist No. 30, p. 189; J. Rakove, The Beginnings of National Politics xiv, xv (1979). The Framers believed that the "structure of the government" was the best protection against abuse of the taxing and spending power. The Federalist No. 31, p. 197; this structure included decision-making by "[i]nquisitive and enlightened Statemen," who were "deemed everywhere best qualified" for such decisions. The Federalist No. 36, p. 224. Ultimately, of course, protection lay in "the Prudence and firmness of the people." The Federalist No. 31, p. 198.

Footnote*1 cont'd
Const., Art. I, § 9, cl. 4, and there still is a prohibition on a tax on "Articles exported from any State." Id., cl. 5. Alexander Hamilton's Federalist essays make this apparent.